1982 S.C. Op. Atty. Gen. 49 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-42, 1982 WL 155011

Office of the Attorney General

State of South Carolina
Opinion No. 82-42
June 14, 1982

***1** The Honorable Richard W. Riley
Governor of South Carolina
The State House
Columbia, South Carolina 29211

Dear Governor Riley:
You have asked the advisory opinion of this Office as to the effect of sine die adjournment of the General Assembly upon bills vetoed and returned by the Governor, but not acted upon by the General Assembly before adjournment.

This question may arise in two situations: First, the General Assembly adjourns sine die before the Governor's time to return a bill has expired; and, second, the General Assembly adjourns sine die after the Governor has returned a bill 'not approved' (vetoed) but the General Assembly has not 'reconsidered' the vetoed bill before adjourning.

The pertinent constitutional provision is the third paragraph of Article IV, Section 21:
If a bill or joint resolution shall not be returned by the Governor within five days after it shall have been presented to him, Sundays excepted, it shall have the same force and effect as if he had signed it, unless the General Assembly, by adjournment, prevents return, in which case it shall have such force and effect unless returned within two days after the next meeting. [Emphasis added.]

Our Supreme Court has considered the first situation in several cases and has concluded that when the General Assembly adjourns sine die before the Governor's time to return a bill not approved (vetoed) has expired, he shall have two days after the beginning of the next 'regular session' to return the bill, approved or disapproved. State ex rel. Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936); Smith v. Jennings, 67 S.C. 324, 45 S.E. 821 (1903); Arnold v. McKellar, 9 S.C. 325 (1878); Corwin v. Comptroller General, 6 S.C. 390 (1875).

The result from these cases is that a bill which cannot be 'reconsidered' by each House because the General Assembly adjourned before the Governor 'returned' the bill, remains ineffective until the 'next session,' when he has two days to return it. Therefore, because a bill does not become an Act until approved by the Governor, or his veto is overridden by both Houses, a vetoed bill is without effect until the veto is overridden. State v. Jones, 99 S.C. 89, 82 S.E. 882 (1914). If a bill is 'returned' in the 'next session' and becomes law, it is fully effective, Arnold v. McKellar, supra. If it were an item in the appropriations bill, the amount appropriated could be expended in the remaining part of the fiscal year for which it was appropriated.

The more essential question which you have asked is the second above-stated. You, as Governor, expect to return several bills not approved, including item vetoes of parts of the appropriations bill. The question is: What is the effect if the General Assembly adjourns sine die after receiving those bills but before acting upon the vetoes? In our opinion, this would be legally equivalent to the General Assembly refusing to override, and the vetoes would be sustained.

***2** The constitutional provision does not fix any time limit for the general Assembly to act on vetoes, and it may delay some time in acting. See, State ex rel. Coleman v. Lewis, supra; but it usually considers vetoes immediately upon receipt, Smith v. Jennings, supra. Since, under Article IV, Section 21, the General Assembly must act to override a timely veto, it is our opinion

that sine die adjournment after the Governor has returned a vetoed bill to the proper House acts as a refusal to override the veto. 73 Am.Jur.2d Statutes §§ 69–79.

To conclude otherwise would enable the General Assembly to negate the Governor's veto by simply refusing to act upon it; a result patently repugnant to our constitutional scheme of checks and balances. See, Charleston Oil Company v. Poulnot, 143 S.C. 283, 141 S.E. 454 (1927), as to intent of the General Assembly as evidenced by refusal to override a veto.

Very truly yours,

Daniel R. McLeod
Attorney General

ATTACHMENT

June 14, 1982

Honorable Richard W. Riley

Governor, State of South Carolina

Post Office Box 11450

Columbia, South Carolina 29211

Dear Governor Riley:

In response to your request for an opinion from my Office concerning the constitutionality of a bill H 3948, which, if enacted, would revise the method of electing members of the St. Andrews Public Service District governing body, my opinion is that it is most probably unconstitutional as violative of the 'no laws for a specific county' language of Article VIII, Section 7 of the South Carolina Constitution. Previous decisions of the South Carolina Supreme Court have made clear that legislation concerning a particular special purpose district is no longer permissible notwithstanding the fact that the General Assembly has not yet delegated all authority with respect to special purpose districts to county councils. See, e.g., Torgerson v. Craven, 267 S.C. 558, 230 S.E.2d 228 (1976); City of North Charleston v. Cooper River Parks and Playgrounds Commission, —— S.C. ——, Opinion No. 21031 filed August 16, 1979).

With kind regards,

Daniel R. McLeod
Attorney General

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